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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,398	09/16/2004	Alexander P. RIGOPULOS	HRX-007	5397

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EXAMINER	
JONES, MARCUS D	

ART UNIT	PAPER NUMBER
3717	

MAIL DATE	DELIVERY MODE
12/30/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/711,398	RIGOPULOS, ALEXANDER P.	
	Examiner	Art Unit	
	Marcus D. Jones	3717	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *87,94-97 and 101-104* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *87, 94-97, and 101-104* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed 19 October 2009 in response to the previous Non-Final Office Action (17 April 2009) is acknowledged and has been entered.

Claims 87, 94-97 and 101-104 are currently pending.

Claims 1-86, 88-93, 98-100 and 105 are cancelled.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 87 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3 2003: Music Mixer Details (http://xbox.ign.com/articles/401/401793p1.html) (hereinafter E3), and further in view of XBOX Live to Launch on One-Year Anniversary of Console Launch

(http://www.microsoft.com/presspass/press/2002/aug02/08-13xboxlivelaunchpr.mspx) (hereinafter XBOX).

The prior art discloses a karaoke game called Music Mixer that after launch could offer downloadable songs via XBOX Live for a fee (E3: Your Own Karaoke Lounge, par 1). An XBOX owner who purchases an online-enabled game and a yearly subscription (XBOX Live) will have access to exclusive downloadable content consisting of levels, characters, weapons (XBOX; 5th bullet) or and the like (*new songs*) related to the game for free or at a price. The content is stored on a server and offered to players through an online store.

In reference to claim 87, E3 discloses Music Mixer as a sing-along game (E3: Your Own Karaoke Lounge, par 1) E3 further discloses Packaged with an unspecified number of karaoke music tracks, using the Xbox Microphone, mixers can karaoke (*It is known that the purpose of karaoke is to sing-along, in sync, with the song for entertainment purposes*) in their own home. Extra karaoke packages with more songs will be available after launch, but MS isn't sure if they will be downloadable via Xbox Live for a fee or if they will be available also in retail stores on disc (*offering for sale and receiving musical content on a digital carrier*). While E3 discloses use of XBOX Live, it does not explicitly disclose that the musical content is stored on a server. The XBOX article teaches a variety of downloadable content that may be offered based on the game, such as new characters, (XBOX: 5th bullet) New songs for a music-based video game would be an obvious variant. Music Mixer further discloses the ability to broadcast locally and globally ripped music across the internet (E3: Global Rave, par 3).

Furthermore, Music Mixer is able to save a karaoke performance to the hard drive and play them as a custom soundtrack (E3: Your Own Karaoke Lounge, par 2). Thus, the playback of the song is independent of the game platform of any songs played on the hard drive occurring outside or independent of the game platform that stored the songs.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have modified E3 in view of XBOX in order to store the musical content on a server so that others could access the material.

E3 and XBOX do not specifically disclose that the video game and music content are separate units located on a downloadable digital carrier. Firstly, it would have been obvious that the game content and music content are stored in two different digital files on a storage medium, as such, they exist as separate units. Furthermore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have separate units of the video game and music content, since it has been held that constructing a formally integral entity in various elements involves only routine skill in the art. *Nerwin v. Erlichmann,* 168 USPQ 177, 179

In reference to claim 94, E3 and XBOX disclose the invention substantially as claimed E3 further discloses the use of a microphone in a sing-along game (par 2).

4. Claims 95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3 and XBOX, and further in view of XBOX Music Mixer Picture (http://xbox.ign.com/dor/objects/566573/xbox-music-mixer/images/musicMixer_091903_13.html) (hereinafter MMPic).

In reference to claims 95 and 96, E3 and XBOX disclose the invention substantially as claimed except a musical time axis as a spatial path. MMPic teaches a progress bar representing a musical time axis as a spatial path. The progress bar is in the foreground of the game image; thus teaching a spatial path does not lie within an image place of the display and is rendered into the image plane.

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have modified E3 and XBOX in view of MMPic in order to provide a graphical display of the position within the song.

In reference to claim 97, the picture is displaying a computer generated likeness of a musician as the player's avatar.

5. Claims 101-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3, XBOX and MMPic, and further in view of Karaoke Revolution (http://ps2.ign.com/articles/458/458064p1.html) (hereinafter KR).

In reference to claims 101, 102, 103, and 104, E3 and XBOX disclose the invention substantially as claimed except for the avatar responding the player's musical performance. KR is another sing-along game that also displays a character that resembles a musician; since the avatar is holding a microphone when he or she is on stage. The game also contains an interactive scoring system that ranks a player on their rhythm and pitch. The audience's reaction and your computer generated musician's movements and appearances are based on a player performance (par 4).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have modified E3 and XBOX in view of KR in order to

provide a more fulfilling playing experience for the player as an encouragement for the player to perform to the best of their ability.

Response to Arguments

1. Applicant's arguments have been fully considered but they are not persuasive.

2. Applicant asserts that “Music Mixer and XBL, Alone or Together, Fails to teach a downloadable digital carrier that includes both the music-based video game and a recorded music product as separate units.

3. The Examiner respectfully disagrees.

E3 and XBOX do not specifically disclose that the video game and music content are separate units located on a downloadable digital carrier. Firstly, it would have been obvious that the game content and music content are stored in two different digital files on a storage medium, as such, they exist as separate units. Furthermore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have separate units of the video game and music content, since it has been held that constructing a formally integral entity in various elements involves only routine skill in the art. *Nerwin v. Erlichmann,* 168 USPQ 177, 179

4. Applicant asserts that “Music Mixer and XBL, Alone or Together, Fails to teach playback of a recorded music product or musical content independent of the game platform.”

5. The Examiner respectfully disagrees.

6. .While the Applicant asserts that the file is stored on the XBOX's hard drive and not played independently of the XBOX, the Examiner asserts that hard drives are substantially portable and interchangeable among computing devices. As such, the digital file that is stored on the hard drive would easily be playable on a PC or other machine with appropriate capability.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus D. Jones whose telephone number is (571)270-3773. The examiner can normally be reached on M-F 9-5 EST, Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on 571-272-4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marcus D. Jones/
Examiner, Art Unit 3717

/Melba Bumgarner/
Supervisory Patent Examiner, Art Unit 3717